

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Sweeney	Team: Squad #9	CCRB Case #: 201509201	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 10/25/2015 4:55 PM	Location of Incident: 59th Street and Columbus Circle	Precinct: 18	18 Mo. SOL 4/25/2017	EO SOL 4/25/2017	
Date/Time CV Reported Wed, 10/28/2015 9:35 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/28/2015 9:35 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Jaspreet Gill	19646	950495	MTN PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jaspreet Gill	Force: PO Jaspreet Gill used a chokehold against § 87(2)(b)	[REDACTED]
B.POM Jaspreet Gill	Force: PO Jaspreet Gill used physical force against § 87(2)(b)	[REDACTED]
C.POM Jaspreet Gill	Force: PO Jaspreet Gill used pepper spray against § 87(2)(b)	[REDACTED]

Case Summary

On October 25, 2015, at approximately 4:55 p.m., § 87(2)(b) was skateboarding in Columbus Circle Park in Manhattan when he was stopped by PO Jaspreet Gill of Midtown North Precinct. § 87(2)(b) alleged the following: PO Gill used a chokehold to bring § 87(2)(b) to the ground (**Allegations A and B**). Once § 87(2)(b) was on the ground, PO Gill sat on top of him and attempted to put him into handcuffs. PO Gill pepper sprayed § 87(2)(b) one time, but the burst did not hit § 87(2)(b) in the eyes (**Allegation C**). PO Gill deployed two more bursts of pepper spray—first in § 87(2)(b)'s left eye, and then in his right (subsumed in **Allegation C**). PO Gill then handcuffed § 87(2)(b) and waited for officers to arrive to transport § 87(2)(b) to the hospital.

PO Gill and two officers, identified via investigation as PO Shreeganes Meade and PO Ahmed Abdalla of Midtown North Precinct, transported § 87(2)(b) to § 87(2)(b) (Board Review 4). At the hospital, medical personnel washed the pepper spray out of his eyes (Privileged Documents 1).

§ 87(2)(b), § 87(2)(b) went to § 87(2)(b) to receive treatment and documentation for the injuries he sustained during the incident: abrasions to his neck, left elbow, and left shoulder blade (Board Review 11, 12, and Privileged Documents 2).

PO Gill charged § 87(2)(b) with resisting arrest, failing to comply with a posed sign, defacing park property, and disorderly conduct (Board Review 9). The criminal court complaint and Office of Court Administration records indicated that the disorderly conduct charge against § 87(2)(b) was unattached (Board Review 7 and 8). As of November 23, 2015, § 87(2)(b)'s criminal case remains open. His next court date is on § 87(2)(b) (Board Review 7).

A video of this incident was posted to § 87(2)(b)'s YouTube page on October 26, 2015 (Board Review 20 for video and 23 for transcription). Following the release of the video, this incident gained considerable media coverage (Board Review 18). As such, the case was placed on the agency's sensitive case list.



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Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because § 87(2)(b) was arrested and IAB is conducting a concurrent investigation (Board Review 9).
- This report has been submitted pending a FOIL request filed on November 23, 2015, for any Notice of Claim filed in regard to the incident (Board Review 10).
- A New York City Office of Court Administration search indicated that this is § 87(2)(b)'s first and only arrest (Board Review 6).

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- PO Gill has been a member of service for four years (Board Review 15). He had no CCRB cases prior to this case. On November 10, 2015, a second complaint was filed against PO Gill concerning an incident that occurred on October 20, 2015—five days before the incident with § 87(2)(b). The complaint, case number 201509548, also involves PO Gill stopping and eventually arresting someone for skateboarding in Columbus Circle. § 87(2)(g)
§ 87(2)(b) The case remains under investigation and is assigned to Inv. Ben Gilmore (Board Review 17).

Findings and Recommendations

Explanation of Subject Officer Identification

- PO Gill acknowledged pepper spraying and arresting § 87(2)(b).

Allegations not Pleaded

- **Abuse of Authority—Stop:** It is undisputed that there are six signs prohibiting skateboarding around the perimeter of Columbus Circle park (Board Review 16). It is undisputed that PO Gill saw § 87(2)(b) skateboarding in Columbus Circle Park. As PO Gill had the authority to stop § 87(2)(b) it was not considered misconduct, and therefore was not pleaded.
- **Force—Restriction of Breathing:** A restriction of breathing allegation was not pleaded because § 87(2)(b) stated that his breathing was never restricted at any point during this incident.

Allegation A—Force: PO Jaspreet Gill used a chokehold against § 87(2)(b)

Allegation B—Force: PO Jaspreet Gill used physical force against § 87(2)(b)

§ 87(2)(b) is a § 87(2)(b) (Board Review 19). § 87(2)(b) stated that he arrived at Columbus Circle at approximately 4:50 p.m. § 87(2)(b) called a friend who was unidentified to the investigation. While he was waiting for his friend to arrive, he skateboarded around the center monument and slid his board across the base of the monument one time. § 87(2)(b) did not make any physical contact with anyone while he was skating. § 87(2)(b) estimated he was skating for approximately ten seconds before he saw PO Gill walking toward him in the center of the circle. § 87(2)(b) hopped off of his skateboard, picked it up in his right hand, and started walking toward PO Gill. § 87(2)(b) met PO Gill in the center of the circle, equidistant between the center monument and the ring of benches around the circle. § 87(2)(b) asked PO Gill, “Is there no skateboarding here?” or something similar. The first thing PO Gill said was, “Give me that,” as he reached for § 87(2)(b) s skateboard, which was in § 87(2)(b) s right hand. PO Gill did not answer § 87(2)(b) s question about the legality of skateboarding in Columbus Circle, so § 87(2)(b) thought that he had done nothing wrong. § 87(2)(b) took one step back, moved his skateboard behind his right leg, and raised his bent left forearm in front of his chest. § 87(2)(b) stated that he did this to prevent PO Gill from taking his skateboard. PO Gill stepped forward as § 87(2)(b) stepped back, maintaining the distance between them. PO Gill then grabbed § 87(2)(b) s left arm with his left hand and grabbed the back of § 87(2)(b) s neck with his right hand. PO Gill did not say anything when he grabbed § 87(2)(b). § 87(2)(b) testified that at this point, he thought to himself, “Oh man, this cop is the violent type.” § 87(2)(b) was surprised that PO Gill had touched him, and he tried to step backward. § 87(2)(b) said, “What did I do wrong? Where does it say there is no

skateboarding?” PO Gill released his grip from § 87(2)(b)'s left arm and pointed upward as he said, “There are signs everywhere.” This was the first that § 87(2)(b) learned of the signs. Before PO Gill touched him, PO Gill never told § 87(2)(b) to sit down, that he was going to give him a summons, to provide his identification, or told him to put his hands behind his back.

PO Gill's hand was still on the back of § 87(2)(b)'s neck, when § 87(2)(b) said, “What are you doing?” PO Gill responded, “I'm giving you a summons—sit down.” PO Gill was hurting § 87(2)(b) because he was grabbing the back of his neck. § 87(2)(b) did not understand why PO Gill was grabbing the back of his neck, and § 87(2)(b) tried to move away from him. § 87(2)(b) moved one-to-two steps backward and said, “Wait, wait, wait!” § 87(2)(b) testified that at this point, he wanted to stand up straight and speak to PO Gill. PO Gill moved forward as § 87(2)(b) moved back, never releasing his grip from the back of § 87(2)(b)'s neck. § 87(2)(b) testified that he never tried to run away from PO Gill, and that he took steps backward because he was trying to free himself from PO Gill's grip so that they could discuss the legality of skating in the park. PO Gill then told § 87(2)(b) to stop resisting arrest, and § 87(2)(b) replied that he was not resisting arrest. PO Gill placed § 87(2)(b) in a chokehold by wrapping his left bicep around the front of § 87(2)(b)'s neck. PO Gill then placed his right leg on the back of § 87(2)(b)'s legs and said, “That's it, you're going down,” PO Gill brought § 87(2)(b) to the ground with his arm still around § 87(2)(b)'s neck. § 87(2)(b) wrapped his left arm around PO Gill's arm and tried to pull PO Gill's arm off of his neck, but he was unable to do so. § 87(2)(b)'s breathing was never restricted at any point. § 87(2)(b) landed on his left side, which caused lacerations to his left hip, left shoulder, and left elbow (Board Reviews 11, 12, and Privileged Documents 2).

§ 87(2)(b) an independent witness who filed the complaint with IAB, stated that § 87(2)(b) was skating for five to seven minutes. § 87(2)(b) then hopped off his skateboard, placed it in his right hand, and said, “Can I not skate here?” § 87(2)(b) did not notice PO Gill until § 87(2)(b) said this. § 87(2)(b) was approximately two-to-three car-lengths from PO Gill when § 87(2)(b) said, “Can I not skate here?” PO Gill walked toward § 87(2)(b) who was approximately three-to-five feet in front of § 87(2)(b). PO Gill did not answer § 87(2)(b)'s question. § 87(2)(b) stood still as he asked the question, and stood still as PO Gill approached him. The first thing PO Gill said to § 87(2)(b) was, “Give me your skateboard.” PO Gill reached for § 87(2)(b)'s board as he said this. § 87(2)(b) did not hear PO Gill say, “Come here,” “You know you're not supposed to be skateboarding here,” “Give me your ID,” “Sit down,” “You're getting a ticket,” or anything similar. § 87(2)(b) moved his skateboard behind his leg, away from PO Gill. § 87(2)(b) said, “What are you doing?” and PO Gill said, “Give me your skateboard.” § 87(2)(b) said, “No,” and pulled the skateboard further behind his body. § 87(2)(b) never swung the skateboard. PO Gill then grabbed § 87(2)(b)'s left wrist, which was raised in front of § 87(2)(b)'s face, with his left hand. PO Gill did not say anything before he grabbed § 87(2)(b). Immediately after he grabbed § 87(2)(b) PO Gill said, “Give me your arm. Give me your arm.” PO Gill and § 87(2)(b) moved one to one-and-one-half car lengths to § 87(2)(b)'s left. PO Gill placed his right hand on the front right side of § 87(2)(b)'s throat. To § 87(2)(b) it looked as if PO Gill was digging his fingers into § 87(2)(b)'s neck. PO Gill continued to say, “Give me your arm,” to which § 87(2)(b) responded, “What did I do?” § 87(2)(b) did not try to run away or pull his left arm away from PO Gill's grasp. § 87(2)(b)'s arm was above his head. PO Gill walked a few steps backward, and § 87(2)(b) moved with him. § 87(2)(b) stood up because she did not like the way PO Gill was holding § 87(2)(b) by the neck. She moved one to one-and-one-half car-lengths to the left so that § 87(2)(b) and PO Gill were directly in front of her. PO Gill then did a move with his leg to bring § 87(2)(b) to the ground. PO Gill did not say anything other than, “Give me your arm,” before

he took him to the ground. § 87(2)(b) estimated that prior to § 87(2)(b) going to the ground, PO Gill said, “Give me your arm,” approximately ten to fifteen times (Board Review 2).

§ 87(2)(b) an independent witness who recorded the incident on his phone, stated that when he arrived at Columbus Circle at approximately 4:50 p.m., § 87(2)(b) was already skateboarding. § 87(2)(b) first noticed PO Gill when PO Gill was walking into the circle from the entrance to the east. § 87(2)(b) did not hear PO Gill or any other officer say, “Stop skateboarding,” or any similar commands to § 87(2)(b). § 87(2)(b) hopped off of his skateboard and walked approximately five to ten feet away from his original position. PO Gill gestured to § 87(2)(b) that he wanted § 87(2)(b) to come closer. § 87(2)(b) did not recall PO Gill saying anything to § 87(2)(b). § 87(2)(b) only recalled PO Gill gesturing to § 87(2)(b). § 87(2)(b) said, “Is there no skateboarding allowed?” or something similar. § 87(2)(b) walked approximately ten feet toward PO Gill, and PO Gill walked approximately twenty feet toward § 87(2)(b). They both stopped when they were standing directly next to one another. They were approximately ten to fifteen feet away from § 87(2)(b) who was sitting on one of the benches. § 87(2)(b) had trouble hearing the conversation between PO Gill and § 87(2)(b) but he recalled thinking that PO Gill seemed calm and § 87(2)(b) seemed compliant. Approximately twenty seconds after § 87(2)(b) asked if he could not skateboard there, PO Gill tried to grab § 87(2)(b)'s skateboard. § 87(2)(b) could not recall if PO Gill said anything either immediately before he reached for the board, or as he was reaching for the board. § 87(2)(b) recoiled by moving back one-to-two steps. Immediately after this, PO Gill reached toward § 87(2)(b)'s neck. From where § 87(2)(b) was sitting, he could not see if PO Gill made contact with § 87(2)(b)'s neck. PO Gill did not say anything either before or as he reached toward § 87(2)(b)'s neck. § 87(2)(b) then took out his phone and started to record. § 87(2)(b) estimated that five seconds elapsed between when PO Gill grabbed § 87(2)(b)'s neck and when the video started to record. During those five seconds, § 87(2)(b) was stumbling backward, and PO Gill was still holding on to § 87(2)(b)'s neck. § 87(2)(b) thought that when § 87(2)(b) was stumbling backward, he moved approximately ten to fifteen feet to the west. PO Gill moved with § 87(2)(b). § 87(2)(b) was saying, “What are you doing to me? What have I done?” § 87(2)(b) could not recall if PO Gill responded to this. PO Gill never told § 87(2)(b) to sit down, asked for his ID, or told him that he was getting a ticket, or told him to put his hands behind his back. PO Gill then placed § 87(2)(b) in a headlock and tried to bring § 87(2)(b) to the ground. PO Gill “dragged § 87(2)(b) by the neck” before he went down to the ground. § 87(2)(b) estimated that PO Gill had § 87(2)(b) in a headlock for three to five seconds (Board Review 3).

PO Gill is § 87(2)(b) (Board Review 22). PO Gill stated that when he first saw § 87(2)(b) was sliding his skateboard across the base of the center monument. PO Gill was approximately 30-40 feet away from § 87(2)(b) when he first saw him. PO Gill walked into Columbus Circle to issue § 87(2)(b) a summons for skateboarding. PO Gill did not say anything to § 87(2)(b) when he entered the circle. PO Gill thought that § 87(2)(b) saw him walk into the circle, at which point § 87(2)(b) hopped off of his skateboard. § 87(2)(b) then started walking south, away from PO Gill. PO Gill said, “How you doing? Can I see some ID?” to § 87(2)(b) as he approached him. They were approximately two-to-three feet apart. PO Gill was uncertain how many times he asked for § 87(2)(b)'s ID, or if it was more than once. § 87(2)(b) did not want to provide PO Gill with his identification. § 87(2)(b) responded, “What did I do wrong?” PO Gill said to § 87(2)(b) “Can you have a seat?” PO Gill could not say how many times he asked § 87(2)(b) to sit down. PO Gill was afraid that § 87(2)(b) might swing his skateboard, which was by § 87(2)(b)'s side, in his right hand. PO Gill asked § 87(2)(b) for the skateboard. § 87(2)(b) refused to take a seat. § 87(2)(b) said, “What did I do wrong?” and did not do

anything with his body. PO Gill said, “You were skateboarding.” § 87(2)(b) replied, “Is that illegal?” PO Gill said that it was, and told § 87(2)(b) “Okay, you don’t have to sit down,” or something similar.

PO Gill then reached for § 87(2)(b)’s skateboard with his left hand. PO Gill first testified that he did not say anything as he reached for § 87(2)(b)’s skateboard, but later said that he did not know if he said anything to § 87(2)(b). § 87(2)(b) put his left arm in front of his body and stepped backward approximately two-to-three feet, which made him think that § 87(2)(b) was going to run away from him. PO Gill then grabbed the back of § 87(2)(b)’s neck with his left hand and grabbed his right shoulder with his right hand. PO Gill made physical contact with § 87(2)(b) to prevent him from running away. Only the fact that § 87(2)(b) did not give PO Gill his skateboard and that he took steps backward factored into PO Gill’s belief that § 87(2)(b) was going to run from him. § 87(2)(b) said again, “What did I do wrong?” and PO Gill, who was still holding onto the back of § 87(2)(b)’s neck, said, “Relax. It’s going to work out.” At this point, PO Gill was still only intending to issue § 87(2)(b) a summons, and not to place him under arrest. PO Gill could feel § 87(2)(b) trying to move away from him. § 87(2)(b) did not do anything with his body besides move backward. § 87(2)(b) was speaking loudly, but PO Gill could not recall anything else that § 87(2)(b) was saying. PO Gill stated, “Listen, you better comply, or this is not going to work—it’s not going to go the way you think it’s going to go. You’re going to get arrested.” § 87(2)(b) was then taken to the ground because he would not comply with PO Gill’s commands. PO Gill testified that § 87(2)(b) was considered under arrest at the point in which § 87(2)(b) began to pull away from him after PO Gill had already placed a hand on the back of his neck. PO Gill estimated that he was holding § 87(2)(b) on the neck and the shoulder for approximately three to five seconds before taking him to the ground. PO Gill used his left leg to bring down § 87(2)(b) and was unsure if his arm ever made contact with § 87(2)(b)’s neck or throat. PO Gill denied placing § 87(2)(b) in a headlock or chokehold.

Upon viewing the video, PO Gill stated that he did not wrap his arm around § 87(2)(b)’s neck. PO Gill testified that at the one-second mark, his arm was making contact with § 87(2)(b)’s chest and shoulders, and not his neck. PO Gill stated that in the video, he could see that there was a space between his arm and § 87(2)(b)’s neck. He reiterated that he might have touched § 87(2)(b)’s neck “at some point,” during the incident, but that in the video, he did not see his arm around § 87(2)(b)’s neck at any point. Once § 87(2)(b) was on the ground, he rolled away from PO Gill, and PO Gill jumped on top of § 87(2)(b) to detain him. PO Gill said that he was unsure where he grabbed § 87(2)(b) and denied making contact with § 87(2)(b)’s neck to bring him back down to the ground. Upon viewing the video, PO Gill stated that he grabbed § 87(2)(b)’s right shoulder to bring him to the ground the second time. He then stated that he did not know if he ever made contact with § 87(2)(b)’s neck. PO Gill testified that he did not see or know how § 87(2)(b) sustained the abrasions to his neck, left shoulder, and left elbow. PO Gill also stated that § 87(2)(b) never complained of any injuries to his neck, left shoulder, or left elbow (Board Review 4).

The video footage begins with PO Gill’s left arm wrapped around § 87(2)(b)’s neck. § 87(2)(b)’s left arm is seen wrapped around PO Gill’s arm, which is simultaneously seen around § 87(2)(b)’s neck. § 87(2)(b)’s right arm is holding his skateboard, which is down by his side. At one second, PO Gill pulls § 87(2)(b) downward, and § 87(2)(b) does a back-bend over PO Gill’s left leg. At two seconds, before falling on his back, § 87(2)(b) flips around so that he and PO Gill are both facing away from the camera. At five seconds, with his arm still around § 87(2)(b)’s neck, PO Gill swings § 87(2)(b) around so that he faces the camera. PO Gill then places his left leg between § 87(2)(b)’s leg, and § 87(2)(b) falls to the ground, as PO Gill falls next to him. PO Gill’s arm at this point is off of § 87(2)(b)’s neck. At six seconds, § 87(2)(b) rolls away from PO Gill, and at seven seconds, PO

Gill tackles § 87(2)(b) by placing his right arm across § 87(2)(b)'s neck and putting his entire body on top of § 87(2)(b)s.



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Patrol Guide procedure 203-11 states that officers may not use chokeholds, which includes, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air (Board Review 23). The courts have outlined three factors that must be analyzed in order to determine if force was excessive: 1) the severity of the crime at issue; 2) whether the suspect poses an immediate threat to the safety of the officers or others; and 3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight Graham v. Connor 490 U.S. 386 (1989) (Board Review 24).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The video establishes that PO Gill's left arm was around § 87(2)(b)'s neck for a time period of at least five seconds. § 87(2)(g)

§ 87(2)(g)

Allegation C—Force: PO Jaspreet Gill used pepper spray against § 87(2)(b)

§ 87(2)(b) stated that after he went to the floor, he rolled away from PO Gill. § 87(2)(b) rolled away because he was trying to stand up and talk to PO Gill. PO Gill then jumped on top of § 87(2)(b) whose stomach was on the ground. PO Gill placed his right hand on the back of § 87(2)(b)'s neck and pushed his head down. § 87(2)(b) raised his head up because he did not want to place his head on the ground. § 87(2)(b)'s left hand was underneath his chest. He was pushing against the ground with his left hand, trying to avoid being crushed by the weight of PO Gill's body on his back. § 87(2)(b) still had his skateboard in his right hand, and PO Gill tried to pry his fingers from the skateboard. PO Gill never told § 87(2)(b) to let go of the skateboard. PO Gill said, "You're getting pepper sprayed," one time. Three or four seconds passed, at which point, PO Gill pepper sprayed § 87(2)(b) in the left side of his face one time. PO Gill never warned § 87(2)(b) before pepper spraying him. § 87(2)(b) acknowledged that after PO Gill pepper sprayed him the first time, PO Gill told him to stop resisting arrest approximately three times in rapid succession. § 87(2)(b) responded by saying, "I'm not resisting!" § 87(2)(b) moved his head to the right and said, "What did I do wrong? What are you doing?" § 87(2)(b) yelled to the individuals in the crowd, "Someone record this!" PO Gill then sprayed § 87(2)(b) in the right side of his face one time. PO Gill did not say anything before he sprayed him the second time. The pepper spray was bothering § 87(2)(b)'s eyes, so he relaxed his left arm, which was underneath his torso. PO Gill grabbed § 87(2)(b)'s left arm and placed it behind § 87(2)(b)'s back. PO Gill reached for § 87(2)(b)'s right hand. § 87(2)(b) released his grip on the skateboard and allowed PO Gill to place his right hand behind his back. PO Gill put § 87(2)(b) in handcuffs. § 87(2)(b) thought that PO Gill called for an additional unit after § 87(2)(b) was in handcuffs (Board Review 1).

§ 87(2)(b) stated that PO Gill reached on his left side and took out his pepper spray. He shook the pepper spray bottle and then sprayed § 87(2)(b). § 87(2)(b) did not recall PO Gill saying anything before he pepper sprayed § 87(2)(b). PO Gill then said, "I'll do it again if you don't give me your arm. Stop resisting." PO Gill said, "Give me your arm," four or five additional times once § 87(2)(b) was on the ground. PO Gill never told § 87(2)(b) to let go of the skateboard. § 87(2)(b) gave PO Gill his left arm, and then his right. PO Gill never told § 87(2)(b) he was under arrest (Board Review 2).

§ 87(2)(b) stated that once PO Gill was on top of § 87(2)(b) was “struggling, but not combative.” § 87(2)(b) repeatedly asked PO Gill, “What is my crime?” § 87(2)(b) could not hear if PO Gill responded. PO Gill touched § 87(2)(b) s arms, and it looked to § 87(2)(b) like PO Gill was trying to place § 87(2)(b) in handcuffs. § 87(2)(b) saw PO Gill speak into his radio, but § 87(2)(b) could not hear what he said. PO Gill told § 87(2)(b) to put his hands behind his back at least two times. § 87(2)(b) s hands remained on the ground. PO Gill then pepper sprayed § 87(2)(b) in the left side of his face. PO Gill did not issue any commands or say anything about spraying § 87(2)(b) immediately before he sprayed him. § 87(2)(b) did not hear PO Gill say, “Put your hands behind your back,” after § 87(2)(b) was sprayed. § 87(2)(b) never heard PO Gill tell § 87(2)(b) he was under arrest. § 87(2)(b) never saw § 87(2)(b) raise the skateboard like he was going to strike PO Gill (Board Review 3).

PO Gill stated that after § 87(2)(b) was on the ground, PO Gill took his hand and pressed down on the back of § 87(2)(b) s neck to keep him down. PO Gill could feel § 87(2)(b) trying to get up from underneath him. With his other hand, PO Gill reached for § 87(2)(b) s right arm and pulled on his wrist. § 87(2)(b) was pulling his arm the other way, counteracting PO Gill’s attempt to put his hand behind his back. PO Gill thought that he pulled § 87(2)(b) s arm for approximately ten seconds, but he was not certain. PO Gill stated, “Stop resisting. Give me your arm.” PO Gill testified that § 87(2)(b) “probably” responded to this, but PO Gill did not recall what he said. PO Gill told § 87(2)(b) “If you don’t give me your hands, you’re going to get pepper sprayed.” PO Gill was unsure how many times he warned § 87(2)(b) about getting pepper sprayed before spraying him. PO Gill then pepper sprayed § 87(2)(b) because § 87(2)(b) would not give him his hands. PO Gill thought that he had been on the ground for approximately twenty seconds before he sprayed him. He continued to apply pressure to the back of § 87(2)(b) s neck when he pepper sprayed him because § 87(2)(b) was still trying to get up. PO Gill’s first burst of pepper spray missed § 87(2)(b) s face. § 87(2)(b) still did not give PO Gill his arm, at which point, PO Gill said, “If you don’t give me that, you’re going to be sprayed again.” PO Gill then released a second burst of spray into the left side of § 87(2)(b) s face, and immediately released a third burst of spray into the right side of § 87(2)(b) s face. He sprayed § 87(2)(b) the second time because § 87(2)(b) still would not give him his arm, and he sprayed him the third time to ensure that the spray entered both of § 87(2)(b) s eyes. PO Gill grabbed § 87(2)(b) s right hand, and § 87(2)(b) released his skateboard. PO Gill pulled his right arm, and then his left arm, behind his back. § 87(2)(b) did not resist in any way at this point. PO Gill stated that he tried to use his radio to call for one additional sector during the incident, but he thought that his attempt was unsuccessful because no officers arrived. He called for an additional unit after § 87(2)(b) was in handcuffs to transport § 87(2)(b) to the hospital (Board Review 4).

The video shows that at ten seconds, PO Gill makes contact with § 87(2)(b) s skateboard, which is still in § 87(2)(b) s right hand. PO Gill is on top of § 87(2)(b) who is on his stomach. At 15 seconds, PO Gill releases § 87(2)(b) s skateboard. His right hand goes to § 87(2)(b) s left hand, which is underneath § 87(2)(b) s chest and against the floor, and PO Gill pulls it in the direction of § 87(2)(b) s right side. PO Gill’s left hand is on the back of § 87(2)(b) s neck. At 18 seconds, PO Gill switches his right hand to the back of § 87(2)(b) s neck, while his left hand reaches for his left side. § 87(2)(b) s legs are moving, and he is pushing his left arm against the ground to bring himself farther away from the ground. At 24 seconds, PO Gill pepper-sprays § 87(2)(b) on the left side of his face, while his right hand is still on the back of § 87(2)(b) s neck. § 87(2)(b) readjusts his elbows so that they are parallel to each other and directly in front of him. He says, “Did I do something wrong? What did I do wrong?” PO Gill’s right hand is still on the back of § 87(2)(b) s neck. No warning or command from PO Gill can be heard prior to him pepper spraying § 87(2)(b) § 87(2)(b) says, “Will you let me get

up?” twice. At 57 seconds, PO Gill pulls on § 87(2)(b) s left arm, and § 87(2)(b) s torso lowers closer to the ground. § 87(2)(b) says, “Can I get my stuff? What are you going to do? What is my crime?” PO Gill, whose left arm is on § 87(2)(b) s left arm, while his right arm is still on the back of § 87(2)(b) s neck, says something to § 87(2)(b) but it is inaudible. At 1:16, § 87(2)(b) says, “I’m not resisting! How am I resisting? I am trying to get up!” At 1:21, PO Gill reaches for his pepper spray on his left side. At 1:28, PO Gill sprays § 87(2)(b) again on the right side of the face. At 1:41, PO Gill speaks into his radio. § 87(2)(b) is rubbing his eyes back and forth on his forearm. At 2:05, PO Gill pulls § 87(2)(b) s right arm behind his back, and § 87(2)(b) releases his grip on the skateboard. At 2:26, PO Gill pulls § 87(2)(b) s left arm behind § 87(2)(b) s back, and handcuffs him.

Pepper spray constitutes a significant degree of force, and should not be used gratuitously against an arrestee who poses no immediate threat to the arresting officer Tracy v. Freshwater 623 F. 3d 90 (2nd Circuit 2010) (Board Review 25). Non-threatening resistance is only one factor to be considered along with the nature of the crime, the absence of actual or threatened harm to the officer, and the degree of force Brown v. City of New York 14-2611 (2nd Circuit 2015) (Board Review 5). Patrol Guide procedure 212-95 states that the minimum distance to deploy pepper spray into an individual’s eyes is three feet (Board Review 27).

§ 87(2)(g)

[REDACTED]

Squad: 9

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Attorney: _____

Title/Signature

Print

Date